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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/714,229	11/14/2003	Simon James Elmer	CM2711	2467

27752 7590 08/03/2006

THE PROCTER & GAMBLE COMPANY
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EXAMINER	
MANAHAN, TODD E	

ART UNIT	PAPER NUMBER
3732	

DATE MAILED: 08/03/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/714,229	Elmer et, al,	
	Examiner	Art Unit	
	Todd E Manahan	3732	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *03 July 2006*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-15* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☒ Claim(s) *8-13* is/are allowed.

6)☒ Claim(s) *1-7,14 and 15* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

Claim Objections

Claim 7 is objected to because of the following informalities: In line 2, "first opening" should be changed to --second opening--. Appropriate correction is required.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1 and 2 are rejected under 35 U.S.C. 102(b) as being anticipated by Ouellette (United States Patent No. 6,295,993).

Ouellette discloses a device comprising an elongate reservoir 7,8,9 having opposing first and second open ends and containing a composition for treating hair and a guide means 10 capable of sliding in the reservoir. The guide means comprises a body 11 extending from the first opening in the reservoir to the second opening through the reservoir, a means 16 protruding from the second opening for pulling the guide means at least partially out of the reservoir through the second opening; and means 12 protruding from the first opening for attaching selected strands of hair to the guide means so that when the guide means is pulled out of the reservoir the strands are pulled in the reservoir through the first opening (see figures 1-3).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 1-7, 14 and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sturdivant (United States Patent No. 3,255,765) in view of Sanders (United States Patent No. 2,839,066).

Sturdivant discloses a device comprising an elongate reservoir 11 having opposing first and second open ends and a guide means capable of sliding in the reservoir. The guide means comprises a body 14 extending from the first opening in the reservoir to the second opening through the reservoir, a means 25 protruding from the second opening for pulling the guide means at least partially out of the reservoir through the second opening; and means 15 protruding from the first opening for attaching selected strands of hair to the guide means so that when the guide means is pulled out of the reservoir the strands are pulled in the reservoir through the first opening (see figures 6 and 7). The body of the guide means comprises an inner strip of material, the pulling means is a pull strip attached to one end of the inner strip, and the attaching means is a hook attached to the end of the inner strip. Sturdivant discloses the invention essentially as claimed except for the reservoir containing a composition for treating hair. Sanders discloses a hair curling strip having a composition for treating hair contained therein in order to condition and perfume the hair during the curling thereof. It would

have been obvious to one skilled in the art to provide the reservoir of Sturdivant with a hair treating composition therein in view of Sanders in order to condition and perfume the hair during the curling operation. Regarding claim 3, To form the reservoir of Sturdivant of a single strip of material folded along its longitudinal axis would have been obvious to one skilled in the art in order to simplify manufacture thereof by requiring only the sealing of one seam. Regarding claim 6, it would have been obvious to one having ordinary skill in the art at the time the invention was made to make the reservoir of polyethylene, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. In re Leshin, 125 USPQ 416.

Allowable Subject Matter

Claims 8-13 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Response to Arguments

Applicant's arguments filed 3 July 2006 have been fully considered but they are not persuasive.

In response to applicant's arguments that Ouellette does not anticipated applicant's invention, it is noted that Ouellette meets all the limitations of the claims. Claim requires a reservoir having two openings and a composition capable of treating hair. Ouellette discloses a reservoir comprised of container 7 and tubes 8,9. The container is open at both ends. A composition for treating hair is held in the container.

Ouellette discloses the attaching means 12 protruding from the first opening for attaching selected strands of hair to the guide means (and hair is drawn into the tube 9, which is part of the "reservoir" (see figure 3 and col. 4, lines 9-16). The fact Ouellette operates in a different manner than applicant's invention is irrelevant. Ouellette meets the structural limitations of applicant's invention as claimed.

In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, one skilled in the art wanting to impart a permanent wave or curl to the hair using the wrap of Sturdivant would find motivation in the teachings of Sanders to impregnant the wrap with a hair treating composition.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the

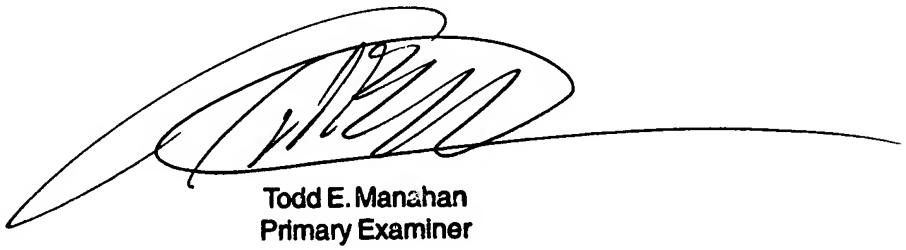
shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Todd E Manahan whose telephone number is (571) 272-4713. The examiner can normally be reached on Mon-Fri.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kevin Shaver can be reached on (571) 272 4720. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

T.E.Manahan
27 July 2006



Todd E. Manahan
Primary Examiner